

Application No. 10/810,230
Amendment dated April 21, 2006
Reply to Office Action of October 31, 2005

Amendments to the Drawings:

The attached sheets of drawings include changes to Figs. 1, 2, 12, 16, 18, 21, 22, 25-27, 29-31, 33, 36, 38, and 40. These sheets, which include Figs. 1, 2, 12, 16, 18, 21, 22, 25-27, 29-31, 33, 36, 38, and 40, replace the original sheets including Figs. 1, 2, 12, 16, 18, 21, 22, 25-27, 29-31, 33, 36, 38, and 40. In Fig. 1, previously omitted reference number 138 has been added. In Figs. 2, 12, 16, 18, 21, 22, 25-27, 29-31, 33, 36, 38, and 40, Applicant modified the reference numbers for consistency with the specification.

Attachment: 16 Replacement Sheets

Application No. 10/810,230
Amendment dated April 21, 2008
Reply to Office Action of October 31, 2005

REMARKS

Applicant cancelled claims 39 and 40 without prejudice or disclaimer of their subject matter, amended claims 1, 5, 23, and 38, and added new claim 47 to further define Applicant's claimed invention.

In the Office Action, the Examiner did not consider three references listed in Applicant's Information Disclosure Statement (IDS) dated March 26, 2004 because the Examiner indicated that he did not have a copy of these references. Applicant is submitting concurrently with this Amendment an IDS including a copy of each of these references.

In the Office Action, the Examiner objected to the drawings. Applicant modified the reference numbers for consistency with the specification. Applicant submits that the Examiner's objection to the drawings has been overcome.

The Examiner objected to the specification as containing a typographical error. Applicant amended the specification correcting the typographical error noted by the Examiner. Applicant submits that the Examiner's objection to the specification has been overcome.

The Examiner objected to claim 23 based on Informalities. Applicant amended claim 23 to delete the redundant phrase noted by the Examiner. Applicant submits that the objection to claim 23 has been overcome.

The Examiner rejected claim 41 under 35 U.S.C. § 101 as being inoperative and therefore lacking utility. In particular, the Examiner contends that "[t]he addition of genes coding for the production of bone in a fusion implant is not functional different from the equivalent fusion implant without the genes coding for the production of bone."

Applicant respectfully traverses the Examiner's rejection. Applicant is submitting in an IDS concurrently filed herewith, U.S. Patent No. 4,795,804 issued January 3, 1989 to Urist describing the usefulness of genes coding on expression for bone morphogenetic agents. (See, for example, col. 14, lines 10-19). It is submitted that one skilled in the art would appreciate and understand the operability and usefulness of genes coding for

Application No. 10/810,230
Amendment dated April 21, 2006
Reply to Office Action of October 31, 2005

the production of bone in the context of the invention as demonstrated by the teachings of Urist.

The Examiner rejected claims 1-22, 24-26, and 29 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,964,762 to Biedermann et al. ("Biedermann"). Independent claim 1, as now amended, recites a method for stabilizing at least two adjacent vertebral bodies, including the step of "permitting movement of the first and second plate segments attached to the adjacent vertebral bodies relative to one another in response to movement of the adjacent vertebral bodies." Biedermann teaches contracting or distracting two plate portions 1, 2 with an adjusting tool. (Biedermann, col. 4, lines 6-10; Fig. 7). Biedermann does not teach or suggest permitting movement of the plate segments in response to movement of the adjacent vertebral bodies. Applicant respectfully submits that the Examiner's rejection of claims 1-22, 24-26, and 29 under 35 U.S.C. § 102(b) as being anticipated by Biedermann has been overcome.

The Examiner rejected claims 23, 27, 28, 30, and 31 under 35 U.S.C. § 103(a) as being unpatentable of Biedermann; and rejected claims 32-40 and 42-46 under 35 U.S.C. § 103(a) as being unpatentable of Biedermann in view of U.S. Patent No. 6,306,136 to Bacelll. Applicant submits that the rejections over claims 23, 27, 28, 30-40, and 42-46 are rendered moot at least because they depend from an allowable independent claim, or claims dependent therefrom.

Applicant submits that independent claim 1 is patentable and that dependent claims 2-38 and 41-48 dependent from independent claim 1, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

In view of the foregoing remarks, it is respectfully submitted that the claims, as amended, are patentable. Therefore, it is requested that the Examiner reconsider the outstanding rejections in view of the preceding comments. Issuance of a timely Notice of Allowance of the claims is earnestly solicited.

Application No. 10/810,230
Amendment dated April 21, 2006
Reply to Office Action of October 31, 2005

To the extent any extension of time under 37 C.F.R. § 1.136 is required to obtain entry of this reply, such extension is hereby respectfully requested. If there are any fees due under 37 C.F.R. §§ 1.16 or 1.17 which are not enclosed herewith, including any fees required for an extension of time under 37 C.F.R. § 1.136, please charge such fees to our Deposit Account No. 50-3726.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: April 21, 2006

By: 

Amedeo F. Ferraro
Registration No. 37,129

1557 Lake O'Pines Street, NE
Hartville, Ohio 44632
Telephone: (330) 877-0700
Facsimile: (330) 877-2030